

AMENDED IN SENATE MARCH 28, 2003

SENATE BILL

No. 543

Introduced by Senator Machado

February 20, 2003

~~An act to amend Section 2100 of the Water Code, relating to water.~~
An act to add Chapter 1.5 (commencing with Section 1249) to Part 2 of Division 2 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 543, as amended, Machado. ~~Groundwater: physical solutions~~
Water rights: groundwater cleanup operations.

Existing law authorizes the State Water Resources Control Board to grant permits and licenses to appropriate water in accordance with certain procedures. Existing law authorizes various public agencies to order a person who has contaminated water to clean up the water or to take other remedial action.

This bill would require the operator of a groundwater cleanup operation, as defined, to hold any water produced by the operation in constructive trust for the benefit of any public water system that has suffered injury as a result of the contamination of that water, unless certain requirements are met. The bill would prohibit the state board from granting a permit or license to appropriate water, or approving a transfer of water, that is produced and discharged by the operator to a body of surface water or a subterranean stream flowing through a known and definite channel unless the operator has agreed to provide replacement water to the public water system injured by the contamination.

~~Existing law, under certain circumstances, authorizes the State Water Resources Control Board to file an action in the superior court to restrict~~

~~pumping or to impose physical solutions to prevent the destruction of, or irreparable injury to, the quality of groundwater.~~

~~The bill, in addition, would authorize the state board to file that action to prevent the impairment of rights to groundwater.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. Section 2100 of the Water Code is amended to~~

~~SECTION 1. Chapter 1.5 (commencing with Section 1249) is added to Part 2 of Division 2 of the Water Code, to read:~~

~~CHAPTER 1.5. GROUNDWATER SUBJECT TO A CLEANUP OPERATION~~

~~1249. The operator of a groundwater cleanup operation shall hold any water produced by the operation in constructive trust for the benefit of any public water system that has suffered injury as a result of the contamination of that water, unless otherwise provided by agreement, or a court has determined that the operator has provided replacement water supply to the public water systems injured by the contamination.~~

~~1249.2. The state board may not grant a permit or license to an operator of a groundwater cleanup operation for the appropriation of water, or approve the transfer of water, that is produced and discharged by the operator to a body of surface water or a subterranean stream flowing through a known and definite channel unless the operator has agreed to provide replacement water to the public water systems injured by the contamination.~~

~~1249.4. (a) The definitions set forth in this section govern the construction of this article.~~

~~(b) "Injury" or "injured" means a diminution in value or loss of a right to store, extract, treat, or distribute groundwater for public use.~~

~~(c) "Operator" means any person engaged in a groundwater cleanup operation or agent of that person designated by the operator for that purpose.~~

1 (d) “Public water system” has the same meaning as that set
2 forth in subdivision (h) of Section 116275 of the Health and Safety
3 Code.

4 (e) “Replacement water supply” means an alternative supply
5 of water of comparable quantity and quality to that existing prior
6 to the contamination of that water, including water that is required
7 for summer time “peaking” and fire flow pipeline distribution
8 capacity.

9 (f) “Groundwater cleanup operation” means any operation or
10 program designed or implemented to remediate or abate
11 groundwater contamination pursuant to an approved work plan or
12 order issued by a federal agency or a state agency, including a
13 regional board, for the cleanup or remediation of contaminated
14 groundwater.

15 read:

16 ~~2100.—(a) After the department has submitted to the board~~
17 ~~recommendations for the protection of the quality of groundwater~~
18 ~~pursuant to Section 12617.1 or 12923.1, or in reliance upon~~
19 ~~investigation by any governmental agency, the board may file an~~
20 ~~action in the superior court to restrict pumping, or to impose~~
21 ~~physical solutions, or both, to the extent necessary to prevent the~~
22 ~~destruction of, or irreparable injury to, the quality of that~~
23 ~~groundwater, or the impairment of rights to that groundwater. In~~
24 ~~that action, all of the claimants to the use of the affected water~~
25 ~~known to the board, except claimants to the use of minor quantities~~
26 ~~of water as defined in Section 2102, shall be named as defendants.~~

27 ~~(b) In any watershed or groundwater basin in which all, or~~
28 ~~substantially all, of the rights to water have been adjudicated and~~
29 ~~the court has retained continuing jurisdiction arising from the~~
30 ~~adjudication, or in which that action is pending, any such~~
31 ~~proceedings by the board shall be undertaken only by intervention~~
32 ~~by the board in that existing action.~~